159 (4)

No. 08-1401

IN THE
SUPREME COURT OF THE UNITED STATES

LINDA METRISH, WARDEN,
Petitioner,

v.

DANIEL NEWMAN,
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Sixth Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

The Sixth Circuit Court of Appeals accurately explained the standard of review governing insufficiency of the evidence claims under the AEDPA and went on to apply that standard to the facts of this case. The court explained that although the facts introduced at Respondent's trial might lead to a speculation as to his guilt, they were insufficient to support a reasonable inference, and therefore affirmed the district court's grant of a writ of habeas corpus. The questions presented by this case are the following:

I. Did the Sixth Circuit correctly apply the well-settled standard of review to the unique facts of this case?

II. Is the Sixth Circuit's observation that a reasonable speculation might not amount to a reasonable inference consistent with the standard of review announced in *Jackson v. Virginia*?

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STATEMENT

This is an inherently fact-bound case addressing the unique evidence introduced at Respondent Daniel Newman's state court trial. Because Petitioner is asking this Court to review this evidence yet again, the facts are explained in detail.

At approximately 12:00 to 12:30 a.m. on the morning of February 28, 1992, Marvin Burton Jr. heard "loud pops" near his home in Hamburg Township, Michigan. (Tr. VII 94.) At the same time, and in the same neighborhood, Joann Geer heard "a big loud thud type of a noise." (Tr. VII 100.)

The following afternoon, Gary Boyd visited the home of his friend, Harry Chappalear, a neighbor of Mr. Burton and Ms. Geer. Mr. Boyd knocked on the door, and when nobody answered, he entered the home to find Mr. Chappalear's dead body on the floor. Mr. Boyd also noticed that a porch light had been removed and that the door to Mr. Chappalear's freezer—in which he had apparently stored marijuana—was open. (Tr. II 46-56.) The following day, an autopsy confirmed that Mr. Chappalear had been killed by several gunshot and shotgun wounds. (Tr. II 91-111.)

Also on February 29, two men were traveling along a dirt road in Brighton Township, Michigan, searching for signs of deer. The men spotted a blue gym bag. When they opened it, they found a ski mask, a Ruger nine-millimeter handgun, two nine-millimeter clips, two walkie-talkies, a blue jean jacket, a pair of gloves, and a sawed-off 12 gauge shotgun. The men turned these items over to the Hamburg Township Police. (Tr. II 125-160.)

Police officers recovered no latent fingerprints from the items found in the blue gym bag. (Tr. II 224-228.) Nor did they recover any latent fingerprints from Mr. Chappalear's home. (Tr. IV 29-39.) A police firearms expert, however, established that a bullet recovered from Mr. Chappalear's

body, as well as a spent shell casing found at the crime scene, had been fired from the Ruger nine-millimeter handgun found in the blue gym bag. (Tr. III 48-49, 64-65.)

Mr. Newman's trial began on February 24, 1993. (Tr. II 1.) The prosecution's evidence included expert forensic testimony tying the Ruger nine-millimeter found in the blue gym bag to at least one bullet and one spent shell casing at the crime scene. (Tr. III 48-49, 64-65.) The prosecution introduced testimony by Jeffrey Wesley, an acquaintance of Mr. Chappalear, that he had sold the gun to Mr. Newman, albeit in a cash transaction without the exchange of any receipt. (Tr. III 179-80.)

The prosecution also relied on testimony from Patricia Mueth, an acquaintance of Mr. Newman, who stated that she had seen a "gray flat type" pistol in a laundry hamper at Mr. Newman's home. (Tr. VI 68.) When presented with the handgun apparently used in Mr. Chappalear's killing, the color of which another witness had described as "black—blue rather" (Tr. III 150), Ms. Mueth stated that the guns were "similar." (Tr. VI 68.)

As to the ammunition, the prosecution's own evidence showed that nine-millimeter cartridges found at Mr. Newman's home were dissimilar from the cartridges used to kill Mr. Chappalear. (Tr. V 29-31.)

The prosecution also introduced forensic evidence that twine seized from Mr. Newman's home was consistent with twine found in the blue gym bag (Tr. V 82-84), that a substance on the blue jean jacket in the gym bag was similar to—but also dissimilar from in important chemical aspects—drywall compound found in Mr. Newman's girlfriend's car (Tr. V 105), that some hairs found in the blue gym bag were similar to hairs from Mr. Newman's dog (Tr. V 214), that hairs on the ski mask were similar to Mr. Newman's hair (Tr. V 216), and that the sawed-off shotgun found

in the blue gym bag was consistent with having been cut with a hacksaw found at Mr. Newman's home, though the prosecution's witness could not rule out any other type of sawing instrument. (Tr. V 109-10, 143.)

As evidence of motive and premeditation to kill, the prosecution introduced testimony that Mr. Newman had asked a friend to "find out the names of drug dealers or people who . . . had money in the bar so that he could rob them." (Tr. VI 71.) The prosecution also established that Mr. Newman had apparently bought drugs from Mr. Chappalear in the past. (Tr. V 66.) Finally, the prosecution introduced evidence that Mr. Chappalear had made a pass at Mr. Newman's girlfriend. (Tr. VI 28-31.)

After the prosecution rested its case, Mr. Newman presented several witnesses to establish an alibi defense. (Tr. VI 45-47, Tr. VII 57, 87-89, 94, 100.)

Mr. Newman was convicted of first degree murder. Although the Michigan courts later vacated the first degree murder conviction in lieu of second-degree murder, they rejected his claim that the evidence introduced against him was constitutionally insufficient. (Pet. App. 46a, 48a-50a.)

Mr. Newman filed a Petition for a Writ of Habeas Corpus, which the district court granted. (Pet. App. 20a-37a.) The Sixth Circuit Court of Appeals affirmed. (Pet. App. 1a-19a.) The panel denied rehearing and the Sixth Circuit denied rehearing en banc.

ARGUMENT

Like any case involving an insufficiency of the evidence claim, this case was entirely fact-specific. The Sixth Circuit opinion did not conflict with any case from this Court or any other court, and did not establish new law, break new ground, or set a new precedent that will bind any future court.

Indeed, the parties are in complete agreement that the Sixth Circuit fully and accurately explained the standard of review governing insufficiency of the evidence claims in habeas corpus cases. The parties also agree that this should remain the standard; Petitioner has not used this case to advocate any change in the law or identified a single reason why this case could affect anybody besides the parties.

Because the Sixth Circuit's well-reasoned opinion correctly applies settled law to the unique facts of this case, and because this Court's resources are poorly suited for reconsidering such narrow case-specific holdings, the Court should deny certiorari.

I. The Sixth Circuit correctly applied the well-settled standard of review to the unique facts of this case

As the Sixth Circuit correctly recognized, this case "is governed by the Antiterrorism and Effective Death Penalty Act" (AEDPA), 28 U.S.C. § 2254(d), and Mr. Newman is entitled to habeas relief only if the Michigan courts' adjudication of his insufficiency of the evidence claim "'involved an unreasonable application of[] clearly established Federal law, as determined by the Supreme Court of the United States.'" *Newman v. Metrish*, 543 F.3d 793, 796 (6th Cir. 2008) (quoting 28 U.S.C. § 2254(d)) (emphasis removed). Put differently, habeas relief would not be warranted merely because "the state court applied the law erroneously or incorrectly," but rather depends upon a

finding that the state courts "unreasonably applied" Supreme Court precedent "to the facts of the prisoner's case." *Id.* (citing *Williams v. Taylor*, 529 U.S. 362, 410, 411, 413 (2000)).

The Sixth Circuit also explained that the applicable Supreme Court precedent is *Jackson v. Virginia*, 443 U.S. 307, 318 (1979), which asks "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Thus, this particular case asks "whether the Michigan Court of Appeals unreasonably applied . . . *Jackson v. Virginia*" when it concluded that a rational jury could have found Mr. Newman guilty based on the particular facts introduced at his trial. *Newman*, 543 F.3d at 796.

Nobody disagrees with the Sixth Circuit that *Jackson*, viewed through the lens of the AEDPA, governs this case; neither Petitioner nor the dissenting Sixth Circuit judge has articulated an alternative standard. Thus, the Petition for Certiorari boils down to a request to re-examine the lengthy record in this case and overrule the Sixth Circuit's reading of the facts. Putting aside for the moment that such a holding would not change or even clarify any law—and therefore certiorari would be inappropriate even if Petitioner's reading of the facts was correct—the Court should deny certiorari because the Sixth Circuit reached the correct result.

Like the district court before it, the Sixth Circuit properly "[re]view[ed] all of the evidence in the light most favorable to the prosecution." *Id.* at 794 n.2; *id.* at 796; Pet. App. 30a. And it properly recognized that "'[c]ircumstantial evidence alone is sufficient to support a conviction, and it is not necessary for the evidence to exclude every reasonable hypothesis except that of guilt.'" *Newman*, 543 F.3d at 796 (citation omitted). Yet after a consideration of the entire record in this case, the Sixth Circuit found that no rational trier of fact could find Mr. Newman guilty, and that the

Michigan Court of Appeals had unreasonably applied *Jackson* in concluding otherwise.

As the Sixth Circuit explained, although there was evidence showing that Mr. Newman had previously owned one of the murder weapons,"there was neither direct nor circumstantial evidence placing Newman at the scene of the crime . . . ." *Id.* at 794. Specifically,

> We can infer only that Newman intended to rob *a* drug dealer and knew that Chappelear was a drug dealer, that a gun previously owned by Newman was used to kill Chappelear, and that a similar looking gun was seen in Newman's home approximately two weeks before the murder. However, the witness who saw the gun said she could not say for sure that it was the same one used in the homicide because the gun was in a laundry bin and it was dark. Further, even assuming that Newman's gun was indeed the one used in the homicide, there was no evidence of what happened to it between that date and the date of the homicide, and we need not speculate as to what might have happened. Although the evidence need not exclude every reasonable hypothesis except that of guilt, it must be enough for any rational trier of fact to have found proof of guilt beyond a reasonable doubt.

Id. at 797 (footnote omitted).

The prosecution's failure to introduce sufficient evidence wasn't for lack of effort. Although the prosecution relied upon a parade of forensic scientists to give their case a flavor of objectivity, the forensic evidence (like the other evidence) failed to link Mr. Newman to the crime,[1] and in some

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[1]The Sixth Circuit did not ignore the forensic evidence in this case, as the Petition implies, but rather properly viewed all of the evidence in the light most favorable to the prosecution. *Newman*, 543 F.3d at 796. The forensic evidence simply didn't amount to much. The prosecution was unable to locate any of Mr. Chappalear's blood on Mr. Newman's clothing, despite the grisly nature in which Mr. Chappalear was shot multiple times with a handgun and a shotgun. Nor did the prosecution locate any fingerprints, DNA, or other evidence at Mr. Chappalear's home that could be connected with Mr. Newman.

As to hair evidence found in the blue gym bag, although the Michigan Court of Appeals explained that "[h]air found on the ski mask *matched* defendant's hair when microscopically compared" (Pet. App. 49a (emphasis added)), the prosecution's expert witness actually testified that human hairs recovered from the gym bag "exhibited characteristics similar to the known head hairs submitted from Mr. Newman." (Tr. V 216.) The witness could not estimate the prevalence of this hair type in society, stating that "[h]air characteristics do not and cannot have a frequency of occurrence applied to them." (Tr. V 225.)

instances even excluded him as the perpetrator.[2] In light of the dearth of evidence presented at Mr. Newman's trial, the Sixth Circuit's conclusion was correct.

Lastly, although the dissenting Sixth Circuit judge lamented his inability to "identify a coherent theory of acquittal," *id.* at 800 (Sutton, J., dissenting), this observation was both legally irrelevant and factually suspect. The Constitution demands that the prosecution prove a defendant guilty beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 367 (1970). The Court should be wary of any attempt "to require the defendant to establish his *innocence* beyond a reasonable doubt." *Cool v. United States*, 409 U.S. 100, 104 (1972).

Moreover, in telling contrast to Judge Sutton, the trial prosecutor was unable to identify a coherent theory of *conviction*. He conceded at a preliminary examination that "certainly . . . the possibility exists that *somebody else* may have been involved in this . . . homicide *rather than the defendant*. Certainly." (Prelim. II 9-10) (emphasis added).) Even in his final argument to the jury, the prosecutor conceded that he really didn't know who shot Harry Chappalear:

As to the sawed-off shotgun, the prosecution's witness could not determine whether the shotgun was cut with a hacksaw, much less the hacksaw recovered from Mr. Newman's home. He merely stated that it was "not inconsistent" with having been cut with a hacksaw. (Tr. V 109-10.) Nor did the witness testify that wood found in the teeth of the hacksaw or metal shavings recovered from Mr. Newman's home had originated from the shotgun. (Tr. V 107.)

And as to the twine, the prosecution's witness stated unequivocally that he did not know whether the twine found in the blue gym bag came from the same piece of twine as was recovered from Mr. Newman's home. (Tr. V 85.) He merely testified that the twine was "consistent." (Tr. V 87.)

[2]The prosecution created impressions of footprints found inside and outside Mr. Chappalear's home and near the blue gym bag in the woods. After comparing these impressions with shoes and boots confiscated from Mr. Newman, the prosecution's witnesses *ruled out* Mr. Newman as having created the footprints. (Tr. V 110-116.) The Michigan Court of Appeals ignored this fact. (Pet. App. 47a-49a.)

> There is evidence in this case that there was more than one person involved in this. There is evidence that there were walkie-talkies. . . . You could find, based on this evidence, that either one person shot . . . Harry Chappalear . . . . You could conclude, I suppose, on this evidence that there were two people who went in.

(Tr. VIII(b) 53-54.)

In sum, just like the district court, the Sixth Circuit thoroughly considered the lengthy record in this case and correctly applied *Jackson* through the lens of the AEDPA. It concluded that the meager circumstantial evidence was insufficient to support Mr. Newman's conviction and that the Michigan Court of Appeals unreasonably applied *Jackson* in holding otherwise. The Sixth Circuit reached the correct result on the highly specific facts of this case, and this Court need not engage in yet another round of review.

II. The Sixth Circuit's observation that a reasonable speculation might not amount to a reasonable inference is entirely consistent with the standard of review announced in *Jackson v. Virginia*

In an attempt to manufacture a legal basis for certiorari, Petitioner argues that the Sixth Circuit's conclusion that a "reasonable speculation" might not amount to a "reasonable inference" is inconsistent with *Jackson*. Petitioner is mistaken.

As an initial matter, the dissenting Sixth Circuit judge does not appear to share Petitioner's concern about the phrase "reasonable speculation." Instead, the dissent simply argues that "[t]here is another way to look at this case" and disagrees with the majority's conclusion "on this record . . ." (Pet. App. 12a-14a, 19a.) The dissent appears to recognize that the "reasonable speculation" is merely intended to provide a framework for application of *Jackson* to cases where the evidence fails to support a "reasonable inference."

Petitioner's argument relies upon the proposition that there *is* no meaningful difference

between a "reasonable speculation" and a "reasonable inference," and because *Jackson* fully accepts that the trier of fact may "draw reasonable inferences from basic facts to ultimate facts," 443 U.S. at 319, it necessarily approved of "reasonable speculation" as well. Put differently, Petitioner wants this Court to make clear that a criminal conviction need not rest on anything more than speculation.

Curiously, however, Petitioner cites a common dictionary to point out that "[c]learly there is a difference between an inference and speculation," and concedes that "speculation" is "generally used . . . in a somewhat pejorative sense" and is reached only "'by conjecture.'" (Pet. 10-11 (quoting American Heritage College Dictionary (3d Ed. 1997)).

Petitioner is absolutely correct about this. An "inference" is defined by Merriam-Webster's Dictionary as "the act of passing from one proposition, statement, or judgment considered as true to another whose truth is believed to follow from that of the former." Merriam-Webster Online Dictionary, available at http://www.merriam-webster.com/dictionary/inference. To "infer" is defined as "to derive as a conclusion from facts or premises." *Id.*, available at http://www.merriam-webster.com/dictionary/infer. To "speculate," however, is defined as "to take to be true on the basis of *insufficient evidence*," and "to be curious or doubtful about." *Id.*, available at http://www.merriam-webster.com/dictionary/speculate (emphasis added).

Similarly, Black's Law Dictionary defines an "inference" as a "conclusion reached by considering other facts and deducing a logical consequence from them," and the "process of thought by which one moves from evidence to proof." Black's Law Dictionary 781 (7th ed. 1999). It defines "speculation" as "theorizing about matters over which *there is no certain knowledge*." *Id.* at 1407 (emphasis added).

The Sixth Circuit's use of the term "reasonable speculation" is therefore entirely consistent

with the holding of *Jackson*. "Speculation" is not the same as a "reasonable inference" because while the former lacks sufficient evidence to support an inference, the latter is "considered as true" based on the truth of its supporting facts. When a set of facts do not support a reasonable inference, they only allow for speculation.

Lastly, the Sixth Circuit has not been alone in distinguishing between inference and speculation in insufficiency cases. In *Piaskowski v. Bett*, 256 F.3d 687, 693 (7th Cir. 2001), the Seventh Circuit observed that "[a]lthough a jury may infer facts from other facts that are established by inference, each link in the chain of inferences must be sufficiently strong to avoid a lapse into speculation."[3]

In sum, the idea that a conviction must be supported by sufficient evidence or reasonable inferences, and may not depend on "speculation," is not new or controversial, and Petitioner has identified no court that disagrees with this obvious proposition. Indeed, far from forbidding a distinction between these terms, *Jackson* demands it.

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[3]The court concluded that "the 'meager circumstantial evidence' is simply too weak to convict petitioner . . . , particularly since much of it is 'conjecture camouflaged as evidence.'" *Piaskowski*, 256 F.3d at 693. "Conjecture" is defined much the same as "speculation"—as an "inference from *defective or presumptive* evidence," and "a conclusion deduced by *surmise or guesswork*." Merriam-Webster Online Dictionary, available at http://www.merriam-webster.com/dictionary/conjecture (emphasis added).

CONCLUSION

This case presents no legal question that could affect anybody besides the parties to this particular case. It involves a disagreement about the unique facts presented at Respondent Daniel Newman's state court trial. Because the Sixth Circuit thoroughly reviewed and correctly applied settled law to those facts, the Court should deny certiorari.[4]

Respectfully submitted,

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[4]Petitioner notes that this Court recently granted certiorari in *McDaniel v. Brown*, No. 08-559,129 S.Ct. 1038 (2009), which involves a sufficiency of the evidence claim pursuant to the AEDPA. Mr. Newman respectfully notes that because *McDaniel* involves a narrow issue—the district court's expansion of the record on habeas review—it is extremely unlikely to result in any holding that could possibly affect this case. Thus, whatever the outcome in *McDaniel* might eventually be, there is no need for subsequent further consideration of this case by the Sixth Circuit.